

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33164
H/kmb

_____AD3d_____

Argued - October 17, 2011

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2011-00367

DECISION & ORDER

Maxine Mallory, etc., appellant, v Allstate Insurance
Company, respondent.

(Index No. 18410/10)

Shayne, Dachs, Corker, Sauer & Dachs, LLP, Mineola, N.Y. (Norman H. Dachs of
counsel), for appellant.

Feldman, Rudy, Kirby & Farquharson, P.C., Jericho, N.Y. (Brian R. Rudy of
counsel), for respondent.

In an action, inter alia, to recover the proceeds of a fire insurance policy, the plaintiff
appeals from an order of the Supreme Court, Suffolk County (Jones, Jr., J.), dated December 13,
2010, which denied her motion pursuant to CPLR 3211(b) to dismiss the defendant's first, second,
and third affirmative defenses.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action, inter alia, to recover the proceeds of a fire
insurance policy. The defendant asserted several affirmative defenses based on policy exclusions.
The plaintiff moved to dismiss the defendant's first, second, and third affirmative defenses on the
ground that the defendant was precluded from raising those defenses as a result of the defendant's
failure to comply with 11 NYCRR 216.6(c) in processing the plaintiff's claim. The Supreme Court
properly denied the motion. In *De Marinis v Tower Ins. Co. of N.Y.* (6 AD3d 484, 486-487), this
Court held that a failure to comply with 11 NYCRR 216.6(c) does not preclude an insurance
company from relying on a policy exclusion to disclaim coverage. We decline the plaintiff's

December 6, 2011

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invitation to overrule *De Marinis*. Accordingly, the plaintiff did not demonstrate that the defenses were without merit as a matter of law (*see* CPLR 3211[b]; *Galasso, Langione & Botter, LLP v Liotti*, 81 AD3d 880, 882).

SKELOS, J.P., HALL, LOTT and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court